Supreme Court, U.S.
FILED
NOV 29 1980
MICHAEL RODAK, JR., CLERK

No. 79-1997

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

CONNECTICUT BOARD OF PARDONS, ET AL
Petitioners

v.

DAVID DUMSCHAT
Respondent

JAMES BROWN, STANLEY CZAJA and
JAMES SHELTON
Intervening Respondents

CONNECTICUT BOARD OF PARDONS, ET AL
Petitioners

v.

JAMES BROWN, STANLEY CZAJA and
JAMES SHELTON
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

CARL R. AJELLO
Attorney General
30 Trinity Street
Hartford, Connecticut

STEPHEN J. O'NEILL
Assistant Attorney General
340 Capitol Avenue
Hartford, Connecticut 06106
(203) 566-2832
Counsel for Petitioners

STEPHEN WIZNER
127 Wall Street
New Haven, Conn. 06520
(203) 436-2210
Counsel for Respondents

PETITION FOR CERTIORARI FILED JUNE 18, 1980.
CERTIORARI GRANTED OCTOBER 14, 1980.

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1.

RELEVANT DOCKET ENTRIES[1]

H76-102 DUMSCHAT VS BOARD OF PARDONS

DATE	NR.	PROCEEDINGS
1976		
2-24	1	Motion to proceed in forma pauperis filed. "motion granted" Blumenfeld, J. m 2-2.
2-24	2.	Complaint filed.
2-24	3.	Law Student Intern Appearance Form. Appearance approve, Blumenfeld, J. m 2-26
2-27		Summons issued and together with same and copies of complaint and attested copies of motion to proceed in forma pauperis handed to Marshal for service.
3-4	4	Marshal's return showing service on all defs.
3-31	5	Appearance of Stephen J. O'Neill entered for defs.
3-31	6	Answer of Defs.
4-1		Placed on trial list.
4-2	7	Motion for Leave to File Amended Complaint.
4-12		Motion to amend granted. Blumenfeld, J. m 4-13-76. Copies to counsel.
4-12	8	Amended Complaint filed.
10-15	9	Stipulation of Facts filed.
11-18		Hearing on Merits - Student Intern Appearance Form re appearance of Jack Hanley filed to represent deft. Amended Stipulation of Facts signed by atty's. for parties. Def. witness sworn & testified. Pltf's. witness sworn & testified. Testimony of def's witness filed in Civ.

[1]In the District Court for the District of Connecticut, Dumschat v. Board of Pardons, et al; H76-102 was consolidated with James Brown, et al v. Board of Pardons, et al; H-77-657. The District entries in each action are printed herein.

DATE	NR.	PROCEEDINGS
		H-74-377 filed in this case as Def's. Exh.A. Pltf's. exh. #1 filed. Briefs parties in three weeks after receipt of transcript. Exhibits with file. (Blumenfeld, J.)
12-17	10	Plaintiff's Brief.
1977		
1-24	11	Defendant's Brief
3-4	12	Affidavit of J. Bernard Gates.
3-4	13	Affidavit of Lawrence Schwartz and Exhibit A attached.
6-16	14	MEMORANDUM OF DECISION' Blumenfeld J. m 6/16/77 (declaratory judgment for the pltf.) Copies mailed.
6-24	15	JUDGMENT entered. Blumenfeld J. m 6/27/77 Copies mailed.
7-6	16	Notice of Appeal filed. Copies mailed. to counsel. Certified copies of notice and docket entries mailed to U.S Court of Appeals and New Haven. Civil management plan and Forms C & D handed to Atty O'Neill.
7-6	17	Bond for Costs on Appeal filed.
7-18	18	Acknowledgement from USCA on document mailed to 7-7-77.
7-15		Record on Appeal mailed to U.S. Court of Appeals.
8-29	19	Motion to Vacate Judgment filed by deft.
1978		
1-12		END. ON motion #19 DENIED although this was not a close action in effect it should be so treated because the same issue regularly recurs. MJB m1-13-78 Copies mailed.
1-16	20	Mandate from the U.S.C. Appeals dated 1/12/78 "The appellant having moved to vacate the judgment of the District Court and to remand

DATE	NR.	PROCEEDINGS
		the action to the District Court and the appellee having consented to the remand it is Ordered that the action be and it hereby is remanded to the U.S. District Court for the District of Conn.
1-16		CASE REOPENED
1-19		File returned from US Court of Appeals
2-17	21	Motion for Certification of a Class Action.
2-17	22	Mo. to Consolidate and Intervene (H77-657), filed by Pltf.
2-17	23	Memo. in Support of Mo. to Consolidate and Intervene, and Motion for Certification of a Class Action.
3-9		END. on #21 motion granted on the basis of a finding that the allegations of the motions are established. MJB m3/9/78 Copies mailed. Copies mailed.
3-9		HEARING re: Additional Hearing on the Merits - Pltfs' Motion to Consolidate and to Intervene - Granted; Pltf's Motion to Admit Law Student Appearance for John Hanley - Granted; Three Law Student Intern Appearance Forms, filed. One Def's witness sworn and testified. Motion for Certification of Class Action - Granted. Order that briefs be filed.
3-9	24	ORDER maintaining action as a class action. Blumenfeld, J. m3-10-78. Copies mailed.
3-16		End. on dckt #22, "Both motions are granted. 3-16-78." Blumenfeld, J. M.3-17-78. Copies sent to counsel of record. (consolidated with Civil H-77-657)
4-12	25	PLAINTIFF'S BRIEF FILED
5-1	26	Answer to Verified Complaint, filed.
5-1	27	Defendants' Brief, filed.
5-1	28	Stipulation re: certain facts, filed.
5-4		Court reporters notes of proceedings held on 3-9-78 filed. (Col)

DATE	NR.	PROCEEDINGS
8-18	29	MEMORANDUM OF DECISION, MJB m 8-18-78. Copies mailed. (adhere to prior decision, for pltf)
9-22	30	JUDGMENT entered. MJB m9-22-78. Copies mailed.
9-26	31	Transcript of Hearing held on 3/9/78. Collard, R.
9-29	32	Notice of Appeal filed by deft. Copies to counsel. Civil Management Plan & Forms C & D mailed to Atty O'Neill. Attested copies of notice of Appeal mailed to US. Court of Appeals and New Haven.
9-29	33	Bond for Costs on Appeal filed. (Surety bond for $250.00)
11-7		Record on Appeal mailed to the U.S Court of Appeals
1979		
2-7		Two volumes of record on appeal received from USCA.
2-6	34	Mandate dated 1-11-79 affirming judgment of District Court with costs to be taxed against the appellants.

Brown v. Board of Pardons **Civil H-77-657**

DATE	NR.	PROCEEDINGS
1977		
12-23	1	Motion For Leave to Proceed in Forma Pauperis with endorsement thereon, "Motion granted. Dec. 23, 1977." Blumenfeld, J. M.12-29-77. Copy sent to pltf.
12-23	2	Affidavit of James Brown.
12-23	3	Affidavit of Stanley Czaja.
12-23	4	Affidavit of James Shelton.
12-23	5	Complaint, filed.
12-23	6	Motion For Certification of Class Action.
12-23		Summons issued together with copies of Motion to Proceed, Affidavits, Complaint and Motion For Certification and handed to US Marshal for service.
1978		
1-3	7	Marshal's returns showing service on all Defs. (12-29-77).
1-17	8	Appearance of Stephen J. O'Neill entered for Defs.
1-17	9	Answer filed.
1-19		Placed on trial list.
1-24	10	Interrogatories filed by Pltfs. as to Def. Conn. Board of Pardons.
2-17	11	Motion to Amend Complaint.
2-17	12	Motion for Certification of a Class Action.
2-17	13	Motion to Consolidate and Intervene.
2-17	14	Memo. in Support of Mo. to Consolidate and Intervene, and Mo. for certification of a Class Action.
2-22	15	Motion for Enlargement of Time to respond to Pltf's Interrogatories until 3-16-78.

DATE	NR.	PROCEEDINGS
2-25		Motion for Enlargement of Time, Ordered Accordingly. (Markowski, C.) m. 2-27-78. Copies mailed.
3-9		End. on dkt #12 "motion granted on the basis of a finding that the allegations of the motions are established. MJB m3/9/78. Copies mailed.
3-9	16	Law Student Appearance (John Hanley) Approved, MJB m3/10/78 Copies mailed.
	17	Law Student Appearance (John Hanley) Approved, MJB m3/10/78 Copies mailed.
	18	Law Student Appearance (John Hanley) APPROVED, MJB m3/10/78 Copies mailed.
3-9	19	ORDER, MJB m3/10/78 (class action) Copies mailed.
3-16		End. on dckt. #12 - "Both motions are granted. 3-16-78." Blumenfeld, J. M.3-17-78. Copies sent to counsel of record. (consolidated with Civil H-76-102)
4-21	20	Plaintiffs' Brief filed.
5-1	21	Answer to Verified Complaint, filed by Defs.
5-1	22	Defendants' Brief, filed.
5-1	23	Stipulation re: certain facts, filed.
9-22	24	JUDGMENT entered. MJB m9-22-78. Copies mailed.
9-29	25	Notice of Appeal filed. by deft. Copies to counsel. Attested copies. Of Notice of Appeal and Docket entries mailed to U.S. Court of Appeals and New Haven. Civil Management Plan & Forms C & D mailed to Atty. O'Neill.
9-29	26	Bond for Costs on Appeal filed. (Surety Bond for $250.00)
11-7		Record on Appeal mailed to U.S. Court of Appeal
1-17-79		Appearance of Stephen Wizner for the pltf
2-7-79		One volume of Record on Appeal received from USCA.

DATE	NR.	PROCEEDINGS
4-14	27	Mandate dated 3/20/80 from the USCA "On consideration whether it is now hereby ordered adjudged and decreed that the judgment of said District Court be and it hereby is affirmed and the action be and it hereby is remanded to said district court for further proceedings in accordance with the opinion of this court with cost to be taxed against the appellants. FUSARO, CLERK, (Kaufman, Smith, and Oakes)
5-21		CASE REOPENED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BROWN,
STANLEY CZAJA, and
JAMES SHELTON,

Plaintiffs,

vs

BOARD OF PARDONS, State of
Connecticut, and
PAUL J. MCQUILLAN (Chairman),
ALVIN DOZEMAN,
MICHAEL E. DUBISSETTE,
JOHN SPEZIALE, nad
PHILIP TATOIAN, Members of
the Board of Pardons,

Defendants.

CIVIL NO.
77-657

VERIFIED

COMPLAINT

Plaintiffs, by their attorneys, complaining of Defendants allege:

I.

1. This is a class action for declaratory judgment on behalf of all inmates of the State of Connecticut who are currently serving sentences of life imprisonment at the Connecticut Correctional Institutions at Somers and at Enfield and who have been denied pardons during their current terms of incarceration by the Connecticut Board of Pardons. The Plaintiffs challenge the constitutionality of the procedure used by the Board of

Pardons for informing inmates serving life sentences that their applications for pardons have been denied.

2. This action is brought pursuant to Title 42, United States Code, §1983, to secure rights, privileges, and immunities guaranteed by the Fourteenth Amendment to the United States Constitution; pursuant to Title 28, United States Code, §§2201 and 2202, relating to declaratory judgments; and pursuant to Rule 23, Federal Rules of Civil Procedure, relating to class actions.

3. Jurisdiction is conferred on this court by Title 28, United States Code, §1343.

II.

4. Plaintiffs sue on behalf of all inmates of the State of Connecticut who are currently serving sentences of life imprisonment at the Connecticut Correctional Institutions at Somers and at Enfield and who have been denied pardons during their current terms of incarceration by the Connecticut Board of Pardons.

5. On information and belief, there are approximately thirty-five members of this class of inmates, and therefore joinder of all members is impracticable.

6. The named Plaintiffs challenge a general policy and practice of the Connecticut Board of Pardons, namely the Board's failure to give written statements of reasons to inmates serving life sentences, whenever the Board denies these inmates' applications for pardons. This policy and practice is applied to all members of the Plaintiff class. Therefore this action presents both questions of law and fact which are common to members of the Plaintiff class.

7. The Connecticut Board of Pardons implements the

procedure challenged by the named Plaintiffs in this action without regard to the individual characteristics or circumstances of an inmate who has applied for a pardon. Therefore, the claims of the named Plaintiffs are typical of and indentical to the claims of the other members of the Plaintiff class.

8. The named Plaintiffs have no present or potential interest which conflicts with the present or potential interests of the other members of the Plaintiff class. They will fairly and adequately represent the interests of the class.

9. The Defendants in this action have acted and refused to act on grounds generally applicable to the Plaintiff class and have thereby made appropriate final declaratory relief with respect to that class as a whole.

III.

10.(a) Defendant Paul J. McQuillan is the Chairman of the Connecticut Board of Pardons.

(b) Defendants Alvin Dozeman, John Speziale, Philip Tatoian and Michael E. DuBissette are members of the Connecticut Board of Pardons.

11.(a) The Board of Pardons is an administrative body empowered to grant both absolute and conditional pardons to Connecticut inmates pursuant to Title 18, Connecticut General Statutes §26.

(b) In almost all cases in which relief is granted to inmate applicants, the Board of Pardons grants only conditional pardons, reducing the applicants' minimum sentences in order to permit earlier eligibility for parole.

12. The majority of inmates serving life sentences in Connecticut during recent years have received conditional pardons before becoming eligible for parole.

13. Almost all of the inmates serving life sentences in Connecticut who have received pardons during recent years have been paroled in their first appearances before the Connecticut Board of Parole.

14. On information and belief, the Board of Pardons does not have any articulated standards for decisionmaking.

15. There has been a rapid change in membership on the Board of Pardons since 1970.

16. On information and belief, the Board of Pardons does not apply consistent decisionmaking criteria to both the applications for pardons made by different applicants and to the successive applications made by the same applicant.

IV.

17. Plaintiff James Brown is an adult citizen of the United States and is currently incarcerated at the Connecticut Correctional Institution at Enfield. His inmate identification number is 23121.

18. On or about November 11, 1967, Plaintiff Brown was convicted of murder in the second degree in the Connecticut Superior Court at Bridgeport. Following a successful appeal of that conviction, on or about March 14, 1969, Plaintiff was convicted of murder in the first degree in the Superior Court.

19. Plaintiff Brown was sentenced to a term of imprisonment of from twenty-five years to life and will become eligible for parole in or about 1987.

20. Plaintiff Brown has been incarcerated since on or about May 12, 1967. From on or about May 12, 1967, until on or about November 11, 1967, Plaintiff was incarcerated in the Bridgeport Jail. From on or about November 11, 1967, until in or about November, 1974, Plaintiff was an inmate at the Connecticut Correctional Institution at Somers. In or about November, 1974, Plaintiff was transferred to the Connecticut Correctional Institution at Enfield.

21. Plaintiff Brown has compiled a good institutional record during the period of his incarceration:

(a) Plaintiff has had no disciplinary citations.

(b) Plaintiff has participated continuously in the institutional furlough program since in or about 1975.

(c) Plaintiff has been employed at the institutions. Since in or about 1974 he has been working in the shipping and receiving department at the Connecticut Correctional Institution at Enfield, and before that he worked in the drycleaning department at the Connecticut Correctional Institution at Somers.

(d) Plaintiff has been attending classes since in or about 1974 in order to obtain an elementary school education.

(e) Plaintiff has learned woodworking in the hobby shop at the institution.

22. Plaintiff Brown appeared before the Connecticut Board of Pardons on October 3, 1977, and applied for a conditional pardon, so that his parole eligibility date would be advanced.

23. At or about six o'clock p.m. on October 3, 1977, Plaintiff Brown was given a slip of paper from the Board of Pardons stating that the Board had denied his application. He was not told why his application had been denied.

24. Plaintiff Brown subsequently requested that the Board of Pardons give him a statement of reasons for the denial of his application.

25. In response, Burton S. Yaffie, Secretary of the Board of Pardons sent Plaintiff Brown a letter, dated October 7, 1977 (attached hereto as Exhibit A), which stated that the question of whether an applicant denied a pardon has a constitutional right to a statement of reasons was an undecided question.

26. The October, 1977 hearing was Plaintiff Brown's second appearance before the Board of Pardons. On May 3, 1976, the Board also denied the Plaintiff's application for a pardon without giving him a statement of reasons.

V.

27. Plaintiff Stanley Czaja is an adult citizen of the United States and is currently incarcerated at the Connecticut Correctional Institution at Enfield. His inmate identification number is 20319.

28. On or about December 12, 1962, Plaintiff Czaja was convicted of murder in the second degree, in the Connecticut Superior Court at Middletown.

29. Plaintiff Czaja was sentenced to a term of imprisonment of from twenty-five years to life and will become eligible for parole in or about 1982.

30. Plaintiff Czaja has been incarcerated since on or about August 6, 1962. From on or about August 6, 1962, until on or about December 12 1962, Plaintiff was incarcerated at the Haddam Jail. From on or about December 12, 1962, until on or about November 3, 1963, Plaintiff was an inmate at the Wethersfield State Prison. From on or about November 3, 1963, until in or about 1970, Plaintiff was an inmate at the Connecticut Correctional Institution at Somers. In or about 1970, Plaintiff was transferred to the Connecticut Correctional Institution at Enfield.

31. Plaintiff Czaja has compiled a good institutional record during the period of his incarceration:

(a) Plaintiff has had no disciplinary citations.

(b) Plaintiff has participated continuously in the institutional furlough program since in or about 1970.

(c) Plaintiff has been employed at the institutions in the following positions during the following approximate dates:

1. tierman, 1962-1964;

2. clerk and janitor in Supervising Captain's office, 1964-1967;

3. statewide truckdriver, 1967-71;

4. worker at the commissary, 1971-1976;

5. head of the institutional library, 1976 to the present.

(d) Plaintiff has been a member of Alcoholics Anonymous since in or about 1967.

32. Plaintiff Czaja appeared before the Connecticut Board of Pardons on May 2, 1977, and applied for a conditional pardon, so that his parole eligibility date would be advanced.

33. At or about six o'clock p.m. on May 2, 1977, Plaintiff Czaja was given a slip of paper from the Board of Pardons stating that the Board had denied his application. He was not told why his application had been denied.

34. On October 12, 1977, Plaintiff Czaja wrote a letter to Burton S. Yaffie, Secretary of the Board of Pardons, requesting a statement of reasons for the denial of the Plaintiff's application for a pardon.

35. In response, Mr. Yaffie sent Plaintiff Czaja a letter, dated October 17, 1977, (attached hereto as Exhibit B), stating that Mr. Yaffie was not authorized to give Plaintiff a statement of reasons.

36. The May, 1977, hearing was Plaintiff Czaja's third appearance before the Board of Pardons. After each of the Plaintiff's previous two appearances, the first being in or about 1974, the Board also denied the Plaintiff's applications for a pardon without giving him a statement of reasons.

VI.

37. Plaintiff James Shelton is an adult citizen of the United States and is currently incarcerated at the Connecticut Correctional Institution at Enfield. His inmate identification number is 23068.

38. On or about February 21, 1969, Plaintiff Shelton was convicted of murder in the first degree in the Connecticut Superior Court at Bridgeport.

39. Plaintiff Shelton was sentenced to a period of imprisonment of from twenty-five years to life and will become eligible for parole in or about 1988.

40. Plaintiff Shelton has been incarcerated since on or about September 1, 1968. From on or about September 1, 1968, until on or about February 21, 1969, Plaintiff was incarcerated in the Bridgeport Jail. From on or about February 21, 1969, until in or about 1972, Plaintiff was an inmate of the Connecticut Correctional Institution at Somers. In or about 1972, Plaintiff was transferred to the Connecticut Correctional Institution at Enfield.

41. Plaintiff Shelton has compiled a good institutional record during the period of his incarceration:

(a) Plaintiff has had no disciplinary citations.

(b) Plaintiff has participated continuously in the institutional furlough program since in or about 1972.

(c) Plaintiff has been employed at the institutions. Since in or about 1972 he has worked as a porter, cleaning the barracks for the officers who work at the Connecticut Correctional Institutions at Somers and at Enfield. While he has been working in this position, the institutional authorities have entrusted Plaintiff with the keys to all of the officers' rooms.

(d) Plaintiff has been a member of Alcoholics Anonymous for about five years.

(e) Plaintiff has been on trips outside of the institution, accompanied by officers, to watch plays and tennis matches in Hartford.

(f) Plaintiff has learned woodworking in the hobby shop at the institution.

42. Plaintiff Shelton appeared before the Connecticut Board of Pardons on October 3, 1977, and applied for a conditional pardon, so that his parole eligibility date would be advanced.

43. At or about six o'clock p.m. on October 3, 1977, Plaintiff Shelton was given a slip of paper from the Board of Pardons stating that the Board had denied his application. He was not told why his application had been denied.

44. On October 9, 1977, Plaintiff Shelton wrote a letter to Burton S. Yaffie, Secretary of the Board of Pardons, requesting a statement of reasons for the denial of Plaintiff's application for a pardon.

45. In response, Mr. Yaffie sent Plaintiff Shelton a letter, dated October 17, 1977, (attached hereto as Exhibit C), stating that Mr. Yaffie was not authorized to give Plaintiff a statement of reasons.

46. The October, 1977, hearing was Plaintiff Shelton's eighth appearance before the Board of Pardons. After each of the Plaintiff's seven previous appearances, the first being in or about 1970, the Board also denied the Plaintiff's applications for a pardon without giving him statements of reasons.

VII.

47. As a result of the failure and refusal of the Connecticut Board of Pardons to provide Plaintiffs with statements of reasons for the denials of their applications for pardons:

(a) Plaintiffs and reviewing courts cannot be sure that the reasons for the denials are not arbitrary and discriminatory;

(b) Plaintiffs do not know whether the Board members have carefully considered their applications;

(c) Plaintiffs do not know whether the Board has been applying consistent decisionmaking criteria to each of their successive applications;

(d) Plaintiffs do now know what they can do while they are incarcerated in order to improve the merits of their applications for pardons.

48. The actions of the Defendants under color of state laws, customs, and usage have deprived Plaintiffs of the right to due process of law guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court:

1. Enter a declaratory judgment declaring (a) that the procedure currently used by the Connecticut Board of Pardons for informing members of the Plaintiff class that their applications for pardons have been denied violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and (b) that all members of the Plaintiff class are entitled to a written statement of reasons from the Board of Pardons whenever the Board denies their applications for pardons.

2. Grant to the Plaintiffs and the members of their class such other relief as the Court deems appropriate and just.

THE PLAINTIFFS

By: STEPHEN WIZNER
MARY F. KELLER
DENNIS E. CURTIS
JUDITH RESNIK
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210

STATE OF CONNECTICUT
Board of Pardons

OFFICE OF SECRETARY

BURTON S. YAFFIE, ESQ
340 FAIRFIELD AVENUE, SUITE 203
BRIDGEPORT, CONNECTICUT 06604
(203) 333-0272

October 7, 1977

Mr. James Brown
Box G
Hazardville Station
Enfield, Connecticut 06082

RE: Inmate Session
October 3, 1977
My File No. 77-486

Dear Mr. Brown:

The Connecticut Board of Pardons is presently engaged in litigation to determine whether or not the Board is required to give a statement of reasons and facts relied upon when denying an application for a pardon.

In this litigation, the Board of Pardons is being represented by the Attorney General's Office. Until this litigation is concluded, the issue of whether or not the applicant for a pardon has a constitutional right to such statement, is still an open question.

Very truly yours,

Burton S. Yaffie, Secretary
State Board of Pardons

BSY:rr

EXHIBIT A

STATE OF CONNECTICUT
Board of Pardons

OFFICE OF SECRETARY

BURTON S. YAFFIE, ESQ
340 FAIRFIELD AVENUE, SUITE 203
BRIDGEPORT, CONNECTICUT 06604
(203) 333-0272

October 17, 1977

Mr. Stanley J. Czaja #20319
Box G
Hazardville Station
Enfield, Connecticut 06082

RE: Board of Pardons
October 3rd Session

Dear Mr. Czaja:

Please be advised that I am not at liberty to provide any further information to you relative to your petition for pardon other than the fact that the requested pardon was denied. Our minutes do not reflect a statement of reasons for such denial. I have been instructed by the Attorney General's Office that the Dumschat matter is on appeal and that there will be no change in policy until a final determination of the Dumschat matter has been resolved.

I am sending a copy of this letter to Attorney Stephen O'Neill for his information along with a photostatic copy of your letter of October 12, 1977. If any further information is available to you, it will be supplied by the Attorney General's Office or upon their instructions. I am sorry that I cannot be more helpful to you at this time.

Very truly yours,

Burton S. Yaffie

Burton S. Yaffie, Secretary
State Board of Pardons

BSY:rr

cc: Stephen O'Neill

EXHIBIT B

STATE OF CONNECTICUT
Board of Pardons

OFFICE OF SECRETARY

BURTON S. YAFFIE, ESQ
340 FAIRFIELD AVENUE, SUITE 203
BRIDGEPORT, CONNECTICUT 06604
(203) 333-0272

October 17, 1977

Mr. James Shelton #23068
Box G, Hazardville
Enfield, Connecticut 06082

RE: Board of Pardons
October 3rd session

Dear Mr. Shelton:

I am in receipt of your letter of October 9, 1977. Unfortunately, I have been advised by the Attorney General's Office that I am not authorized to issue any further information relative to the decision of the Board and therefore cannot answer your question. The minutes merely reflect that your petition was denied and do not set forth any specific reasons for such denial. No petitioner received a statement of reasons.

I am sending a copy of this letter to Attorney Stephen J. O'Neill, Attorney General's Office, for his information along with a photostatic copy of your letter of October 9th, 1977.

Very truly yours,

Burton S. Yaffie

Burton S. Yaffie, Secretary
State Board of Pardons

BSY:rr

cc: Stephen J. O'Neill

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BROWN,
STANLEY CZAJA, and
JAMES SHELTON,

Plaintiffs,

vs

BOARD OF PARDONS, State of Connecticut, and
PAUL J. MCQUILLAN (Chairman),
ALVIN DOZEMAN,
MICHAEL E. DUBISSETTE,
JOHN SPEZIALE, and
PHILIP TATOIAN,
Members of the Board of Pardons,

Civil No.

Defendants.

VERIFICATION

State of Connecticut)
) ss.:
County of Tolland)

JAMES BROWN, being duly sworn, deposes and says, that he has read the foregoing complaint, and that the allegations contained therein concerning him are true of his own knowledge, except that as to those allegations made on information and belief he believes them to be true.

JAMES BROWN

Sworn to before me this 7th
day of December, 1977

RAYMOND GREGOR
Notary Public

My Commission Expires March 31, 1981

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BROWN,
STANLEY CZAJA, and
JAMES SHELTON,

Plaintiffs,

vs

BOARD OF PARDONS, State of
Connecticut, and
PAUL J. MCQUILLAN (Chairman),
ALVIN DOZEMAN,
MICHAEL E. DUBISSETTE,
JOHN SPEZIALE, and
PHILIP TATOIAN,
Members of the Board
of Pardons,

Civil No.

Defendants.

VERIFICATION

State of Connecticut)
) ss.:
County of Tolland)

STANLEY CZAJA, being duly sworn, deposes and says, that he has read the foregoing complaint, and that the allegations contained therein concerning him are true of his own knowledge, except that as to those allegations made on information and belief he believes them to be true.

STANLEY CZAJA

Sworn to before me this 12th
day of December, 1977

TERIEN P. JOHNSON
Notary Public

My Commission Expires March 1982

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BROWN,
STANLEY CZAJA, and
JAMES SHELTON,

Plaintiffs,

vs

BOARD OF PARDONS, State of
Connecticut, and
PAUL J. MCQUILLAN (Chairman),
ALVIN DOZEMAN,
MICHAEL E. DUBISSETTE,
JOHN SPEZIALE, and
PHILIP TATOIAN,
Members of the Board
of Pardons,

Civil No.

Defendants.

VERIFICATION

State of Connecticut)
) ss.:
County of Tolland)

JAMES SHELTON, being duly sworn, deposes and says, that he has read the foregoing complaint, and that the allegations contained therein concerning him are true of his own knowledge, except that as to those allegations made on information and belief he believes them to be true.

JAMES SHELTON

Sworn to before me this 7th
day of December, 1977

RAYMOND GREGOR
Notary Public

My Commission Expires March 31, 1981

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BROWN, et al.,

Plaintiffs,

vs

Civil No.
H-77-657

BOARD OF PARDONS, et al.,

Defendants.

MOTION TO AMEND COMPLAINT

Plaintiffs move to amend their Complaint by deleting paragraphs 1, 4, 31(b), and 38, and substituting in their place:

1. This is a class action for declaratory judgment on behalf of all inmates of the State of Connecticut who are currently serving sentences of life imprisonment at the Connecticut Correctional Institutions at Somers and at Enfield and who have been, or who will be, denied pardons during their current terms of incarceration by the Connecticut Board of Pardons. The Plaintiffs challenge the constitutionality of the procedure used by the Board of Pardons for informing inmates serving life sentences that their applications for pardons have been denied.

4. Plaintiffs sue on behalf of all inmates of the State of Connecticut who are currently serving sentences of life imprisonment at the Connecticut Correctional Institutions at Somers and at Enfield and who have been, or who will be, denied pardons during their current terms of incarceration by the Connecticut Board of Pardons.

31(b). Plaintiff has participated continuously in the institution furlough program since in or about 1972.

38. On or about February 21, 1969, Plaintiff Shelton was convicted of murder in the second degree in the Connecticut Superior Court at Bridgeport.

The reasons for the amendments are to expand the proposed class to include all persons whose interests may be affected by this litigation, and to correct certain allegations.

THE PLAINTIFFS
By: STEPHEN WIZNER
DENNIS E. CURTIS
MARY F. KELLER
JUDITH RESNIK
Their Attorneys
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Amend Complaint was mailed, postage prepaid and properly addressed, to Stephen O'Neill, Esq., 340 Capitol Avenue, Hartford, Connecticut 06115, Attorney for Defendants, this 17 day of February, 1978.

STEPHEN WIZNER

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES BROWN, et al — Civil No. H-77-657

v.

BOARD OF PARDONS, et al

DAVID DUMSCHAT — Civil No. H-76-102

v.

BOARD OF PARDONS, et al

ANSWER TO
VERIFIED COMPLAINT

1. Paragraphs I.1, I.2 and I.3 are admitted.

2. Paragraphs II.4, II.5, II.6, II.7, II.8 and II.9 are admitted.

3. Paragraphs III.10(a), III.10(b) and III.11(a) are admitted.

4. Paragraph III.11(b) is admitted to the extent that it alleges that in almost all cases in which relief is granted to inmate applicants, the action of the Board of Pardons reduces the applicant's minimum sentence in order to permit earlier eligibility for parole. The remainder of this paragraph is denied.

5. Paragraph III.12 is denied and Paragraph III.13 is admitted.

6. Paragraphs III.14, III.15 and III.16 are denied.

7. Paragraphs IV.17, IV.18, IV.19 and IV.20 are admitted.

8. Paragraph IV.21 and all sub-paragraphs are admitted.

9. Paragraph IV.22 is admitted.

10. That portion of Paragraph IV.23 which alleges that the plaintiff was denied a pardon on October 3, 1977, is admitted. The remainder of said paragraph is denied.

11. Paragraphs IV.24 and IV.25 are admitted.

12. Paragraph IV.26 is admitted except that the dated May 3, 1976, should be April 5, 1976.

13. Paragraphs V.27 through and including V.30 are admitted.

14. Paragraph V.31 and all sub-paragraphs thereof are admitted except that portion of V.31(b) which alleges that Czaja has participated in the furlough program from 1970. In fact, Czaja has participated in such program since 1972.

15. Paragraph V.32 is admitted.

16. That portion of Paragraph V.33 which alleges that Czaja was denied a pardon on May 2, 1977, is admitted. The remainder of said paragraph is denied.

17. Paragraph V.34 is admitted.

18. Paragraph V.35 is denied for the reason that said letter speaks for itself.

19. Paragraph V.36 is admitted to the extent that it alleges that the plaintiff has *twice* been denied a pardon. The remainder of said paragraph is denied.

20. Paragraph VI.37 is admitted.

21. Paragraph VI.38 is admitted except for the claim that the plaintiff was convicted of First Degree Murder. He, in fact, was convicted of Second Degree Murder.

22. Paragraphs VI.39 and VI.40 are admitted.

23. Paragraph VI.41 and all sub-paragraphs are admitted.

24. Paragraph VI.42 is admitted.

25. That portion of Paragraph VI.43 which alleges that Shelton was denied a pardon on October 3, 1977, is admitted. The remainder of said paragraph is denied.

26. Paragraph VI.44 is admitted.

27. Paragraph VI.45 is denied for the reason that said letter speaks for itself.

28. Paragraph VI.46 is denied except that it is admitted that plaintiff Shelton has appeared before the Board of Pardons and denied a pardon on seven occasions.

29. Paragraph VII.47 and all sub-paragraphs are denied.

30. Paragraph VII.48 is denied.

DEFENDANTS

Board of Pardons, et al

CARL R. AJELLO
Attorney General

By STEPHEN J. O'NEILL
Assistant Attorney General
340 Capitol Avenue
Hartford, Connecticut

Service certified pursuant to
Rule 5(b), F.R.C.P. this 1st
day of May, 1978.

STEPHEN J. O'NEILL
Assistant Attorney General

BERNARD GATES, called as a witness, being first duly sworn, was examined, and testified as follows:

BY THE COURT:

Q You're Chairman of the Board of Pardons?

A Board of Parole.

Q Board of Parole?

A Yes, your Honor.

MR. O'NEILL: For what it's worth, I would just like to note briefly for the record that I'm at sort of a disadvantage. I am representing Mr. Gates in a number of cases, and have represented him in a number of cases, and also represent the Board of Parole.

I just think the record ought to note that.

THE COURT: I would think you would have an extra advantage, from what you said. You not only know everything about Mr. Gates —

MR. O'NEILL: I'll take all the advantages I can get.

BY THE COURT:

Q Chairman of the Board of Parole. How long have you been the Chairman?

A Nine years.

Q Nine years. All right.

Now, what we are concerned about here is whether you know what percentage of the cases of prisoners under life sentence over any period of time that you can tell us about have had their sentences commuted in order to make them eligible for earlier parole considerations.

A Your Honor, I can't give you definite statistics. I don't have the staff to go through thousands of files.

I have been associated, however, with the Pardons Board, have known something concerning its work, for thirty-five years, almost since I've been in the corrections system.

My judgment is that no more than 10 or 15 percent of lifers serve the whole twenty years. The bulk of the commutations over the past years, until recently at least — and I can't speak of it recently — but the bulk of the commutations over past years appeared to come between 14 and 17 years.

Q My question is not when, but how many receive some commutation so as to make them eligible for parole consideration.

A I cannot testify to that. The only thing I can say, in the nine years I've been Chairman of this Board there have only been, I believe, three lifers appear before the Board for parole consideration who had served the total twenty years. I don't know who has the statistics.

Q Only three during how long a period?

A During the nine years. I believe there's only three that had completed a total of twenty years.

There used to be — Your Honor, for a number of years there were a great many cases commuted somewhere between

14 and 17 years, and that type of thing.

Q Well, I'm not talking about just when they got to it.

A Yes.

Q But they got to it at some point.

A At some point.

Q In many of the cases?

A Many of them.

Q And when you say twenty years, is that the statutory minumum for a lifer?

A That was, until October of 1975, on all cases.

Q So there was nothing in the way of a modification of sentence in order to permit earlier parole consideration in three cases of lifers over a period of nine years?

A I believe that is correct. That's an estimate.

Q I don't know how many lifers there were sentenced over that period. You don't either, I guess?

A I don't. In recent years I haven't had the time. I remember ten years ago or so when there were ninety lifers in the institution.

Q When there were ninety?

A Yes. But I could not testify as to what it is now at all.

Q All right. So certainly over 75 percent of lifers have

had some action in their favor which made them eligible for parole?

A I would judge that to be correct, your Honor.

Q Yes, 75 percent, anyway. That's an estimate.

Now, are you on the Pardons Board?

A No, your Honor, I am not. It's a completely separate board.

Q Now, when such a lifer comes before you, and on the Pardons Board, are they then automatically granted a parole because the Pardons Board has said this fellow is eligible for parole?

A No one is automatically granted parole, your Honor. It is the Board of Parole's responsibility to decide whether a person would be paroled. And I do believe that the Board of Parole members place some credence in the fact that the Board of Pardons commuted this man to a shorter term and, consequently, believe that he was eligible for serious parole consideration.

We have not always paroled them, however.

Q I see.

A I can remember at least of two cases in recent years where we did not parole for, in one case, more than three years; in another case, for approximately two years.

But in the vast majority of the cases, I would say 90 percent of the cases at least, a commutation by the Pardons Board results in parole by the Parole Board.

Q Well, you don't know to what extent the Pardons Board — well, all right. I guess not.

Ninety percent are given parole. How about the other prisoners who don't come to you that way - how many of them are given parole?

A Well, in that particular institution, and lifers are all originally at Somers and I think are almost always there when they appear before the Board of Pardons, in that particular institution our parole rate is approximately 55 percent. I can testify to the fact that the percentage of lifers who are paroled is higher than other offenses.

Q The parole rate is 55 percent?

A At the present time.

Q Including lifers?

A Including lifers. Including all cases at the Somers institution is averaging about 55 percent.

Your Honor, the figure that you stated a while ago concerning — or someone stated concerning percentage of paroles, and I think has been stated on this stand by me in previous cases, is the whole Department of Corrections; ten different institutions.

Q I see.

A This type of offender is sentenced to the Somers institution and in that institution, where the more serious offenders are confined, the average parole rate at the present time is about 55 percent.

Q Including the lifers?

A Including the lifers.

THE COURT: Is there anything further you think we can get of usefulness to us?

MR. HANLY: I just had two more questions.

THE COURT: Sure.

DIRECT EXAMINATION
BY MR. HANLY:

Q In approximately how many cases per year is parole denied or parole revoked? Just a general approximate figure.

THE COURT: Well, you can't say both.

MR. HANLY: Okay.

THE COURT: "Denied". Well, he says 55 percent, they get it.

MR. HANLY: Your Honor, I was interested in the number of cases, to compare the number of cases in which the Parole Board per year grants a statement of reasons versus the Pardons Board, in order to establish something about the burden that would be on the Pardons Board.

THE COURT: Okay.

A In granting hearings we deny approximately 300 men a year, in which we give oral reasons at the time of the decision and written reasons within ten days afterwards.

On revocations, we are averaging about 250 to 260 revo-

cations a year. We provide oral reasons to the parole violator after the hearing and in the presence of his attorney. We do not provide written reasons, except by written request.

MR. HANLY: That's all I have, your Honor.

THE COURT: All right.

MR. O'NEILL: I have just a couple of questions, your Honor.

THE COURT: Denial of parole then is always accompanied by a statement of reasons, right?

THE WITNESS: Yes sir.

THE COURT: Orally, at the end of the hearing?

THE WITNESS: Yes, your Honor.

THE COURT: And in writing ten days later?

THE WITNESS: Yes, that's correct.

THE COURT: All right.

CROSS-EXAMINATION
BY MR. O'NEILL:

Q Mr. Gates, on these lifers whose minimum term has been reduced by the Board of Pardons and are ultimately paroled by the Board of Parole, I think you said that that percentage is something like 90 percent?

A That would be my judgment.

Q Would you have an idea as to how many years those

lifers would have served on those sentences?

THE COURT: What?

Q How many years would those lifers have served on those sentences prior to being paroled by the Board of Parole?

A My estimate would be that the vast majority of commutations over the years has been between 14 and 17 years.

Q And this parole rate at Somers of 55 percent, you are talking about each individual parole release hearing, take it?

A Well, the statistic I was endeavoring to give was at the present time fifty-five — yes, I understand what you mean. At the present time fifty-five — No. During the year, 55 percent of those appearing before the Board at the Somers institution during the year are paroled.

Q So this 55 percent is a yearly percentage?

A Yes, that is correct.

Q Of the parole release hearings at Somers?

A Yes.

MR. O'NEILL: I have no other questions, your Honor.

BY THE COURT:

Q Now, when you get a commuted lifer before you for parole consideration, does anything come down to you in his file to show on what basis the Pardons Board acted, other than the fact that there's a certificate: "Commuted"?

A No, your Honor.

Q That's all you get?

A We receive the minutes of each Pardons Board meeting, but it just merely states that the person's sentence is commuted to whatever time it was commuted to.

Q That's all you get?

A That's all. Except in an unusual situation where there's a medical situation, or where there's one case the year before last the Pardons Board commuted with the stipulation that the Parole Board parole only to a mental hospital if he would be kept there the rest of his life.

Of course, that is impossible. The Pardons Board doesn't have the authority to do that. Neither can anyone judge a person to be there —

Q Well, you can't blame them for being innovative, or trying to be.

A But normally it just says the time is commuted to such and such a time.

Q Do you get anything from them: when you get these minutes, is it the minutes of their whole session?

A The whole session.

Q Or just of this particular prisoner?

A No. The minutes are very short and it gives, like most minutes, those who are present, who sat on the cases, and has only to do with those who were granted commutation. There's nothing in it about any cases that are heard that are not granted.

Q So you don't know why they were not granted in a case?

A No.

THE COURT: And neither do we, I guess.

Is there anybody here who can tell us what happens in those cases?

MR. O'NEILL: Well, on that point, your Honor —

THE COURT: Do we need Mr. Gates any further?

MR. HANLY: Nothing further, your Honor.

THE COURT: Just one point to clear up:

BY THE COURT:

Q I think you said that 90 percent of those who come before you with a commutation in hand are granted parole.

A At least 90 percent.

Q On their first appearance?

A That is correct.

Q And the others may be a delay of two or three years for some reason, or are some of those denied parole - the other ten percent?

A They are denied parole. All of them — I think I'm correct to say all of them have been paroled to some time.

Q At some time.

A And I can remember our denying one man for three or four years. But I think that's the longest time.

Normally we parole, your Honor — The cases that were granted commutation in October we will be hearing in December.

Q Right.

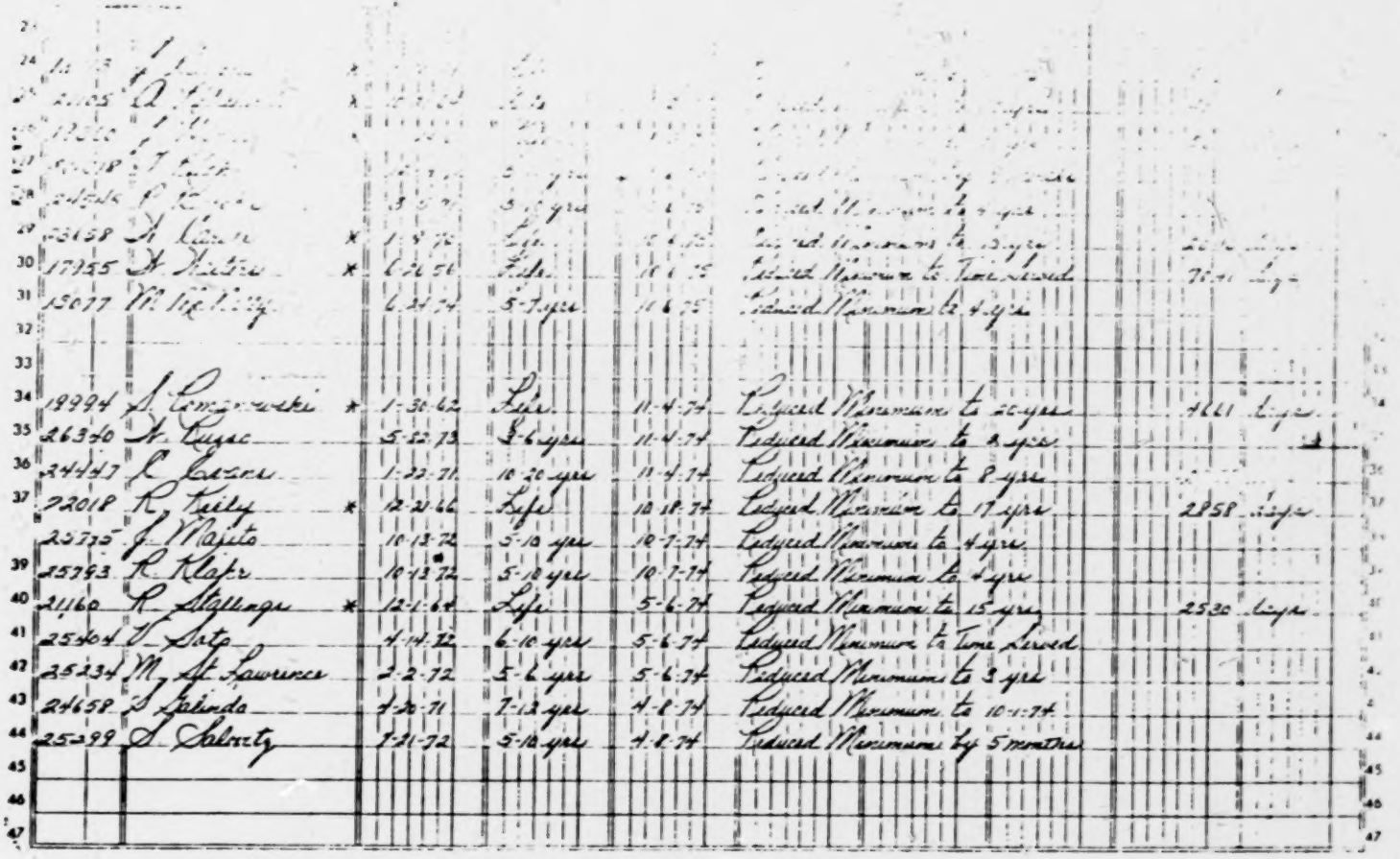
A And they probably will be paroled within sixty days of that time, if they're granted parole.

THE COURT: All right. Thank you, Mr. Gates.

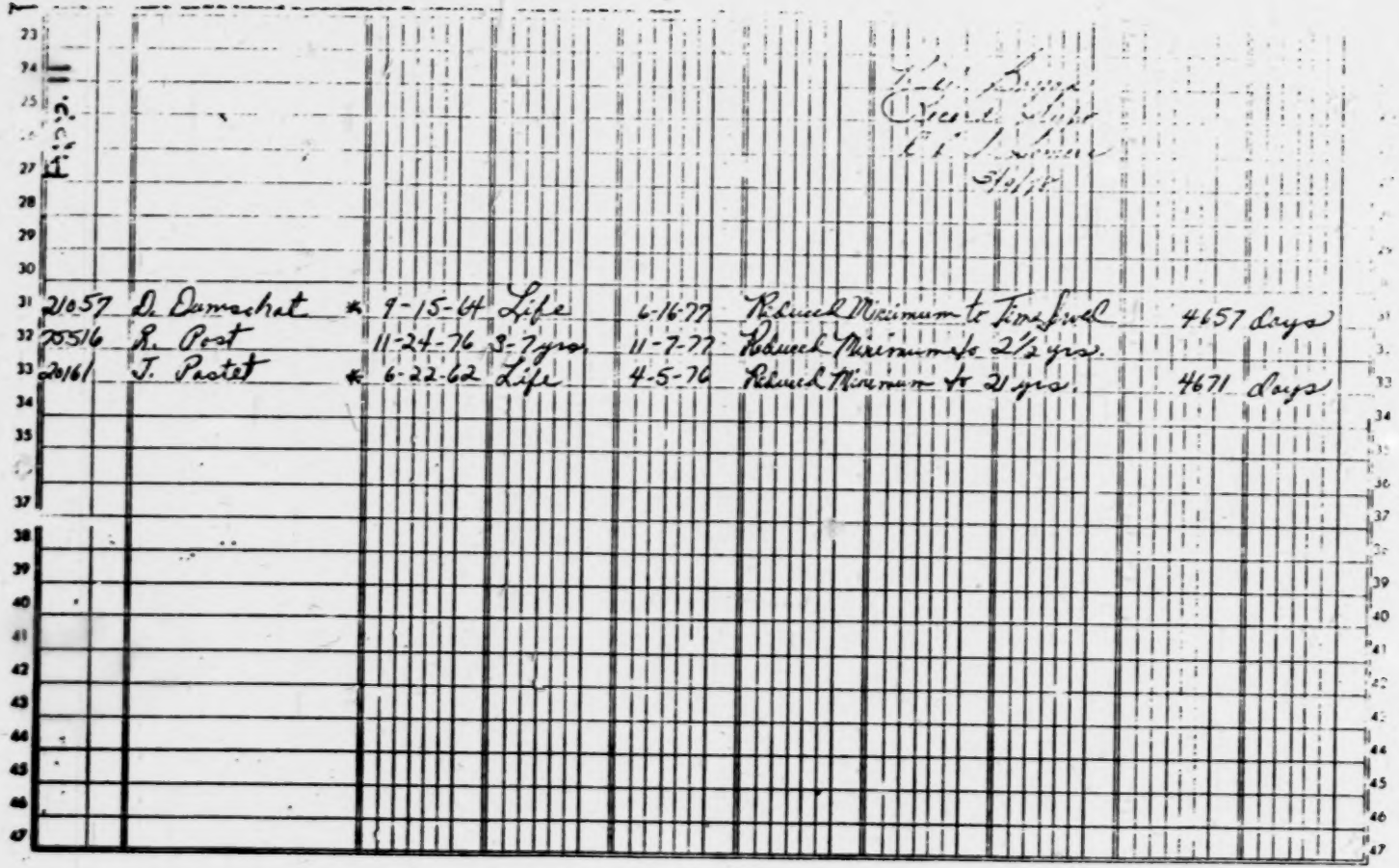
(witness excused)

* * * * * *

#	Name	1 Date of Sentence	2 Sentence	3 Action to be Taken	4	5 Board Action	6	7	8 Time Served
1	[illegible] C. Cesar	9-26-73	10-Life	11-7-77	Reduced	Maximum	to 5 yrs		
2	20470 C. Fuentes	5-1-72	16 2/3 yrs	11-7-77	Reduced	Maximum	to 9 1/2 yrs		
3	24257 A. Cruz	9-17-74	2-5 yrs	10-3-77	Reduced	Maximum	to Time Served		
4	25041 L. Cruz	7-14-76	5 yrs	10-3-77	Reduced	Sent. to 4-5	Entire rate		
5	00460 C. Roberts *	12-6-48	Life	5-2-77	Reduced	Maximum	to 18 yrs	30.69	days
6	67345 F. Dixon	1-6-76	5-15 yrs	5-2-77	Reduced	Maximum	to 2 1/2 yrs		
7	01165 J. Hardin *	2-20-61	Life	5-2-77	Reduced	Maximum	to 20 yrs	5907	days
8	26496 E. Hardin	9-26-73	10-Life	5-2-77	Reduced	Maximum	to 7 yrs		
9	19963 D. Little *	1-3-62	Life	5-2-77	Reduced	Maximum	to 20 yrs	5598	days
10	63254 J. Tolle	11-7-75	4-8 yrs	4-4-77	Reduced	Maximum	to 3 yrs		
11	21882 W. Chapman *	1-27-66	Life	4-4-77	Reduced	Maximum	to 20 yrs	3905	days
12	46540 J. Davis	7-19-74	7 1/2-10 yrs	4-4-77	Reduced	Maximum	to 5 yrs		
13	25634 R. Knight *	11-30-71	Life	4-4-77	Reduced	Maximum	to 20 yrs	1958	days
14	[illegible]								
15									
16	23614 S. Lagos	7-15-76	2-5 yrs	11-1-76	Reduced	Maximum	to Time Served		
17	19630 D. Mabery *	3-10-61	Life	10-14-76	Reduced	Maximum	to 20 yrs	5701	days
18	23634 J. Orr *	12-15-69	Life	10-14-76	Reduced	Maximum	to 20 yrs	2495	days
19	21860 L. Esquivel *	11-20-71	Life	10-14-76	Reduced	Maximum	to 20 yrs	1790	days
20	22927 K. Easton	6-1-73	16 2/3 yrs	4-5-76	Reduced	Maximum	to 14 yrs		
21	[redacted]								
22									



24	[illegible]								
25	21105	D. [illegible]	*	[illegible]	[illegible]	[illegible]	[illegible]		
26	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]		
27	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]		
28	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]		
29	23158	H. [illegible]	*	1-8-[illegible]	Life	[illegible]	Reduced Minimum to 10 yrs		
30	17955	H. Nelson	*	6-26-56	Life	10-6-75	Reduced Minimum to Time Served	7841	Days
31	15077	W. [illegible]		6-24-74	5-7 yrs	10-6-75	Reduced Minimum to 4 yrs		
32									
33									
34	19994	S. Lomanowski	*	1-30-62	Life	11-4-74	Reduced Minimum to 20 yrs	4611	Days
35	26340	R. Lugo		5-22-73	5-6 yrs	11-4-74	Reduced Minimum to 3 yrs		
36	24443	L. Lozano		1-22-71	10-20 yrs	11-4-74	Reduced Minimum to 8 yrs		
37	22018	R. Kelly	*	12-21-66	Life	10-18-74	Reduced Minimum to 17 yrs	2858	Days
38	25735	J. Majuto		10-13-72	5-10 yrs	10-7-74	Reduced Minimum to 4 yrs		
39	25793	R. Klapp		10-13-72	5-10 yrs	10-7-74	Reduced Minimum to 4 yrs		
40	21160	R. Stallings	*	12-1-64	Life	5-6-74	Reduced Minimum to 15 yrs	2530	Days
41	25404	T. Soto		4-14-72	6-10 yrs	5-6-74	Reduced Minimum to Time Served		
42	25234	M. St. Lawrence		2-2-72	5-6 yrs	5-6-74	Reduced Minimum to 3 yrs		
43	24658	J. Galindo		4-20-71	7-13 yrs	4-8-74	Reduced Minimum to 10-1-74		
44	25-99	J. Sabinty		7-21-72	5-10 yrs	4-8-74	Reduced Minimum by 5 months		
45									
46									
47									



21057	D. Damschat	*	9-15-64	Life	6-16-77	Reduced Minimum to Time Served	4657 days
20516	R. Post		11-24-76	3-7 yrs.	11-7-77	Reduced Minimum to 2½ yrs.	
20161	J. Pastet	*	6-22-62	Life	4-5-76	Reduced Minimum to 21 yrs.	4671 days

Parole Board Action

Page 2

	#	Name		1 Date of Sentence	2 Sentence	3 Earliest Poss. Rel. Date	4 5 6 Parole Board Action	7 8 Time Served	
1	22225	R Labrake	*	1-19-65	Life	11-5-73	Reduced Minimum to 10/1/74	2212	days
2	24261	L Lasso		11-30-65	17-40 yrs	10-15-73	Reduced Minimum to 15 yrs		
3	21159	J Test	*	11-30-64	Life	10-15-73	Reduced Minimum to 15 yrs	3971	days
4	24836	D Lewis	*	6-23-71	Life	10-15-73	Reduced Minimum to 5 yrs	845	days
5	25161	F Starke		6-18-71	7-14 yrs	10-1-73	Reduced Minimum to 10/1/74		
6	24621	V Aponte		5-9-72	8-16 yrs	9-3-73	Reduced Minimum by 1 yrs		
7	24996	L Savage		10-15-71	5-15 yrs	9-3-73	Reduced Minimum by 2½ yrs		
8	20865	C Farrar	*	3-20-64	Life	9-9-73	Reduced Minimum to 2nd/74	3370	days
9	25261	A Lari		7-12-72	2-10 yrs	9-9-73	Reduced Minimum to 1 yrs		
10	21569	J Zappone		11-30-65	17-45 yrs	9-9-73	Reduced Minimum to 7/1/75		
11	25184	D Pearson		6-30-70	5-15 yrs	5-7-73	Reduced Minimum to 2 yrs		
12									
13									
14	19318	J Mauer	*	4-26-60	Life	10-2-72	Reduced Minimum to Time Served	4541	days
15	23553	L Hopkins		4-27-70	2-12 yrs	10-2-72	Reduced Minimum to Time Served		
16	23667	W Guacomazzi		1-9-70	5-7 yrs	10-2-72	Reduced Minimum to Time Served		
17	22966	D Calarace		12-20-68	2-14 yrs	10-2-72	Reduced Minimum to Time Served		
18	22420	O Nemes		5-27-69	3-5 yrs	10-2-72	Reduced Minimum to Time Served		
19	23062	L Malave		1-27-69	7-15 yrs	10-2-72	Reduced Minimum to Time Served		
20	18985	D Crawford	*	6-1-62	Life	10-2-72	Reduced Minimum to Time Served	3700	days
21									
22									

PAUL McQUILLAN, called as a witness, being first duly sworn, was examined, and testified as follows:

* * * * * *

DIRECT EXAMINATION
BY MR. O'NEILL:

Q Mr. McQuillan, I guess we've established that you are the Chairman of the Board of Pardons.

A Yes, I am.

Q And how long have you been the Chairman?

A I believe it's about a year.

Q And did I forward to you the transcripts in the Corrona and Dumschat cases tried before this Court.

A Yes, you did.

Q Involving the same issue involved in these cases?

A That is correct.

Q And at my request did you study those transcripts?

A I have read them.

Q Those transcripts include quite a bit of testimony from Mr. Loveland, who was then the Chairman of the Board of Pardons, outlining the procedures applicable before the Board of Pardons, do they not?

A They do.

Q And those procedures are the same now as they were when he was testifying?

A They're basically the same, yes.

Q And the issue in this case, as it was in the cases previously tried before this Court, is whether or not, as a matter of due process, a person who is denied a pardon is entitled to a statement of reasons for that denial.

A That's right.

Q Do you agree that that was the issue in Corrona and Dumschat?

A Right.

Q And it is true that as of today the Board of Pardons does not give a reason as to why a pardon is denied?

A We do not.

Q All right. Why?

A I think it's basically what I believe the members of the Board understand to be what a pardon is; and that is, as I interpret it, an act of mercy, an act of forgiveness that is shown to a person who asks for that. It's a very extraordinary type of remedy.

Some of the people that come before us, and I have not looked at the cases of the gentlemen named on the petition but I think I can recall two of them —

MR. O'NEILL: Well, if I may interrupt just for a second, your honor.

Counsel and I have agreed that we will, by way of stipulation, submit to the Court the file that was before the Board of Pardons when these three named, specifically named plaintiffs were last denied a pardon. That will be coming in within a few days.

MR. HANLEY: We have agreed to that, your honor.

THE COURT: Have you seen it?

MR. HANLEY: The file? No, we haven't yet seen it.

THE COURT:It is submitted to me in camera?

MR. O'NEILL: No, there's nothing secretive about it.

THE COURT: What?

MR. O'NEILL: There's nothing secretive about it. But it will be submitted to you by way of stipulation within a few days.

THE COURT: When it is, what am I supposed to do with it? Weigh it, or what?

MR. O'NEILL: Just to show what file the Board of Pardons had before it when it denied these gentlemen the pardon.

THE COURT: So what? So I see this is the file they had. Am I supposed to examine it?

MR. O'NEILL: Well, not sitting as a super pardons board, no.

THE COURT: Then for what?

MR. O'NEILL: To show what was before the Board of Pardons when they denied a pardon.

I think you ought to know what was before them when they considered this request for pardon.

THE COURT: Does it matter what was before them in deciding whether or not they ought to give a reason for denying the pardon?

I mean it may show a good reason for denying it, but —

MR. O'NEILL: I'm sure it does.

THE COURT: —does it show a good reason for not expressing a reason?

MR. O'NEILL: Well, that's what you will have to decide after we submit this to you.

THE COURT: All right.

So you are going to submit those to me; those three files.

MR. O'NEILL: Yes, your honor.

THE COURT: What else?

MR. O'NEILL: I interrupted the witness.

THE WITNESS: Well, I was being asked —

BY THE COURT:

Q Well, you said you regard it as an act of mercy and, therefore, appeals to factors that don't lend themselves on the historical basis of the law to reasons. Is that right?

A That's true, your honor. I think many people, including lawyers who come before us, I feel confuse our board with the Parole Board or some other system whereby you earn credits. If you have done a month in prison, have behaved yourself, you've earned credits, say, for five days.

There is no credit system that I know of by which you earn a pardon. There are no certain acts you perform.

I have had people come before us, your honor, I've been on the board now five years, who have been exemplary prisoners. They're models. They do everything right. They've never been in trouble. They're in AA, they go to church every day; all the things that you would expect a person to do to rehabilitate himself. And they're still denied a pardon.

Q Why? Now, take a case like that. Why would you deny him a pardon?

A All right. First of all, we have to consider, your honor, the enormity of the crime that was originally committed and the effect that that had on society and the effect that it has on the overall criminal justice system. I think that's —

Q Well, if you consider that and that's the reason for denying it, why can't you say so?

Why can't you say the seriousness of the offense was so marked that no pardon ought to be granted?

A I think in individual cases, your honor, there can consideration; it might not be too difficult to say that.

But may I — you've asked me for an example, and these are public records and our hearings are public. There were two young men recently that were out on furlough down at Cheshire. They were considered model prisoners. They were allowed to walk the streets every day. And they were out one day and they were found to have weapons in their rooms. Then they'd end up where they went out and raped someone.

They came before us and the people that had marched in—

Q They came what?

A When they came before us, I would say I've seen one of them there maybe six or seven times since I've been on the Board, and the people, maybe as many as 30 to 40 people, came to speak in their behalf from all sorts of factors of our community. And they cannot understand why we won't grant that pardon.

Well, one of them, when I looked at the crime, he walked into his house one night with a shotgun and blew his father's head off, raped his sister and held off the police. He's been in jail now for eight years for that.

I just felt that the type of crime he committed was such that eight years was not enough and I did not see in him, from the record, that this man really had the type of appreciation for what he did.

Q All right. That sounds like a good reason.

But the question here is why shouldn't you say so and tell him so. Why shouldn't that appear on the record?

A My personal feeling, your honor, is that if we were working under some type of merit system and credit system where I could say to him, "you go out now and behave yourself for six months, or whatever, and we'll go give you a pardon, don't get arguing with any of the guards", or maybe some other type of rehabilitation. All right.

But if I may compare it, and maybe I'm being unfair, when your honor is giving a sentence and you get a pre-sentence report before you and that report may indicate, by all the things we know, that that person should go to jail, or it may indicate that they should not; but when they appear before you, their demeanor, the way they conduct themselves, you may decide to go a different way. And there's nothing that requires, that I know of, that you give any reason whatsoever for why you make that final decision. The decision is up to you.

I think that we, as members of the Board, feel that way; that we —

Q Well, there is a proposal that even on sentencing, there is a proposed amendment to the rules that would require the Judge to express his reasons for imposing a particular sentence.

MR. O'NEILL: Yes. But would that be as a matter of constitutional law, or just a rule change.

THE COURT: Well, I say there is a proposal.

MR. O'NEILL: We're litigating a constitutional issue here.

THE COURT: All right. I understand.

A If I may. One of the men I believe that's down here today, your honor, I haven't looked in the records and I didn't know what the names were really until this morning, but as I recall the particular incident he was involved in, and he's a very

humble man, he comes before us with very little education, with probably as many as 25 or 30 crimes over a long period of time when he was a younger man.

The incident that he was involved with, apparently he had been with another woman, the woman's husband found out about it, and he came over and punched holes into the four tires of his car and flattened them with an ice pick.

He called for his wife. His wife came. He had a gun in his car. He drove her to the man's house. He knocked on the door and he says, "you just ruined my four tires." The guy says, "well, you know, you've been out with my wife all day".

"Yeah, but you ruined my four tires". And he shot him dead.

And I think to today he doesn't appreciate, perhaps, the value between human life and the material things, and it's based on no educational background, a sharecropper coming off a farm, and I don't think that he had that evaluation.

I think it would be almost impossible to explain to this man why he was denied that pardon.

Q (By the Court) Well, it doesn't say that your reasons have to be explainable to the man, as long as they are given. I don't understand that any Court has ever required that the reasons be fully appreciated by the rejected applicant.

The purpose of having reasons expressed on the record is just to establish that there is a record basis which would support those reasons that it's not arbitrary and capricious. That is, that you don't say anything, you might be turning a fellow down because he shuffles in when he walks in, or because he's got red hair, or wears a beard. There might be all kinds of impermissible reasons, but unless you express one that the

record can support, there's a question as to whether there has been due process provided.

A Well, your honor, I do not concur with that, because I feel —

Q I know.

A We don't always agree.

Q It's a moot point. The Supreme Court has just decided that they improvidently granted certiorari in a case that raised the question.

A I feel that we would be starting here with developing some sort of a score card for prisoners. That the people that I've seen that are making this type of petition and who have made complaint, individual lawyers who have come to me and say, "Gee, why didn't you let this person out, what does he have to do, where do we go with this sort of thing"; what they're looking for is almost sort of a score sheet to earn credits to get a pardon.

I don't believe that they can do before the Parole Board, that they did when they came to pre-sentence, that they did when they were sentenced. This is something entirely different, since clemency is going to be given to them.

If they start looking for score cards to keep, to earn — I'm using that terminology — some report card, or whatever it may be that would earn them credit to get out, I don't think that that's the way it works.

We have changed a little bit, your honor, in the last year. I think the record would indicate that we have, in fact, given pardons to inmates without going to the Parole Board; that we have said that they should be out Wednesday afternoon, or Friday.

We don't have them go out that same day only because of administrative procedures and the trauma of the person going out onto the street. We allow the institution to give them that opportunity.

But I think that I was asked my philosophy, and I personally feel that the Board of Pardons, if it's going to have any real meaning, should start giving pardons where they are warranted.

Q (By the Court) Do you realize how you're upsetting the whole system?

A It won't be the first time, your honor.

Q I don't say that entirely in a facetious way.

A I know you don't.

Q Because one of the big problems with inmates, as you now know if you've been on this Board for a year, is the discontent and the problems that that discontent generates among prisoners which arises from disparity in treatment. And the disparity in sentence is one of those things, and we try to avoid that at our end up here.

Also, the disparity in granting parole. Every time a fellow gets parole, the fellow that doesn't get it says, you know, why didn't I get it; and this becomes a matter, I'm sure of discussion and conversation throughout the prison.

And now when you go ahead and say you don't even need to go to the Parole Board, you came to us and we set you out just like that, everybody who comes before you is going to say, now, wait a minute, why are you sending us before the Parole Board now, when you do send some.

I don't know. I don't mean to deter you from what you are doing. All I want to point out is that having decided to do that, you have injected another possible source of discontent among the remaining prisoners.

A I think, your honor, we are well aware that because it's —

Q Because the Parole Board went after you themselves and said, "What are you doing"?

A No. These are not people, your honor, that have been in here for a year or two. They have been people who have been in here for perhaps over 15 years. And it might be that it is a compelling health reason.

It's really an act of mercy. In other words, that they've been in there so long and they maybe have six months to a year, and they're not going to be able to do anything but die, and give them the opportunity to be with their family. So we have done that.

But we are acutely aware of the fact that within that prison institution every bit of our conduct is closely watched, and if there is an indication of any unfairness it causes a lot of difficulty; and the warden is, of course, very concerned about that sort of thing.

His wishes — he has never discussed a case with us, and is not asked. But we know that if we should do something with that, we could cause a great deal of dissension among the people.

Q All right. As I say, it's really not my business to butt in there. But I was a little curious as to the kind of reasoning on the

part of the Board when they can say to themselves: "Well, we're going to give this fellow pardon complete, starting this afternoon": and then say to the next fellow: "Well, you get nothing and we're not even going to tell you why, what our reason is".

A Well, your honor, I think we do have awareness of the fact that a person that comes before us has gone through our judicial system, has had either a trial or a plea, a pre-sentence, appeal, and so forth.

So that we do not want to take away the prerogatives of the Court. The Court has said: 20 years. Now, if we just start giving out pardons and taking that away, I think we'll be very —

Q I don't say you can't be tough and that you should give out pardons. All we're concerned with is, when you don't, why can't you put down a line or two and say why. "We are not doing it here, there is a terrible crime, and the seriousness of the offense would be deprecated if you were given a pardon".

That seems to be an adequate basis for guideline discrimination in the Federal parole system, and it's been upheld when they just say: It would deprecate the seriousness of the offense to let this fellow out until after he has served at least 48 months, or 60 months, or whatever the case may be: that it would deprecate the seriousness of the offense, and that would be enough to justify a larger period before parole consideration.

So I don't see why it's so tough to do that.

A It might not be a question of toughness, your honor, as far as difficulty in carrying out administratively.

Q All right. Now, we've got another problem. Administrative difficulty. All right.

A I would say, your honor, that in answer to your question to me just now, that I don't know that we would be helping an individual if we had a patented answer that: You have just committed such an awful crime that we cannot consider you at this time.

Is that going to give him any more incentive or any more way of preparing himself to get out? We're not helping him anyway, and I think we can automatically do this and almost have here a routine, but I don't really think that's being fair to that prisoner.

Q Well, now if that's the reason — you know, if you don't tell him anything at all, you're not being fair, you're not being more fair than if you tell him, well, this was just that kind of an offense, it was just that bad, we're not going to give you a pardon.

Now, as I say, whether he's willing to accept that is not the point. The only thing is he knows you're not doing it because his name is Gisolowicz, or because he's black, or because he's black and was married to a white woman, or something like that.

He knows then this is because of what you did, it was so bad. So at least he knows that what you said is that it's not because of some quirk of your own that would be an impermissible basis; but it's a reason. And we may not agree that you're right, but at least he can't say that it's arbitrary and capricious.

Now, have you given consideration - well, I guess it doesn't really matter from your standpoint. That your concept of dispensing mercy is a little weak here as far as support goes.

It's true that you can pardon completely, and in that sense you are dispensing mercy. But until you started giving them a pardon, all that the Pardons Board did was to make them

available for parole consideration. They just said now in this case we will let the Parole Board decide whether you ought to get out. That was the function of the Board of Pardons. It was just sort of a super branch of the Parole Board dealing with those cases which would not automatically be eligible for parole consideration under the law.

All you do is make them available for parole consideration, and then the next step is whether they should go out on parole, and on what conditions.

A pardon carries with it a whole lot more freedom and a whole greater restoration of rights by far than admission to parole.

A It does.

I think as I understand it, as it has developed over the years, while the Board of Pardons certainly had the power to just pardon them —

Q Yes, you have that.

A We ought to call a meeting this morning, and somebody is pardoned, and that's it.

However, I believe that the Board has felt that it did not have the staff and facilities to go into the in depth preparation for a person to go out into the street. And that's where the Parole Board can be of assistance.

Q But the Parole Board does that.

A Yes, it does.

Q Then I don't know why the Pardons Board doesn't do what I have construed their function to be is merely to make a

prisoner who is not eligible for parole consideration, pardon him to the extent that he becomes eligible for parole consideration.

A And we do do that.

Q Well, that has been done and that's the way it was done.

A And we still do it.

Q And you still do it.

A Yes.

Q Well, sometimes you take the shortcut and say: Right away we're going to pardon you, it's only six months and —

A Your honor —

Q I don't quarrel with it.

A I don't want you to get the impression that this is done on a mass basis. It's not. It's a very rare occasion when it's done.

Q Sure.

A But it had been done.

Q All right. I'm talking too much here about administrative difficulty.

Now, what is the administrative difficulty you're talking about? Do I understand it's to express a reason that it's an administrative difficulty? To write that on the record, or to actually stamp a slip and sign it?

A First of all —

MR. O'NEILL: Are you asking him?

THE COURT: Yes. this is what he said. Mr. McQuillan said there's administrative difficulties in giving reasons for the denial of an applicant for a pardon.

A I'm not so sure that I said that, your honor.

I started to talk about administrative problems, and I don't know if I said — I said it would not be difficult to just take a piece of paper and sign on it: You've done a bad thing, you have to stay around for a while.

I do think if we're going to be fair to these people that our Board, before we did that, on each person, that we would have to sit down among ourselves and discuss and come to a conclusion to give a written statement as to why that pardon was denied.

And as you know, with 40 or 50 or 60 of these at a sitting, it would be a considerable increase, I would think, in the clerical work and also —

Q Well, "considerable increase". Now, you read all these files.

A Yes sir.

Q And your fellow board members, I assume, do.

A I find that in our discussions it is obvious they have.

Q All right. So you discuss it and one says: Deny this fellow; his crime was so serious that it would deprecate the seriousness of the offense if he were to be given a pardon.

A Yes.

Q Now, that takes a part of a minute. What is the administrative difficulty that follows from that quick disposition?

A I don't see any great difficulty.

Q Administrative difficulty?

A No. They're going to be given an answer as to whether they were or were not granted a pardon, anyhow.

Q Yes. You say: No, the crime was too serious. The nature of the crime was such that it would deprecate the seriousness of the offense.

A But I don't think it would be fair, your honor, for you to have the impression that that's the only reason we're going to deny that pardon. It may be that while the crime was serious and the person has been in there maybe a sufficient amount of time, that he should be given consideration —

Q And you're still not going to give him a pardon.

A And you've got a four page psychiatric report and the last line says given the same circumstances, the same stress, we cannot assure you that he will not commit the same crime.

I think it's the same consideration that courts have in releasing someone early. Then they go out on the street and commit a terrible crime again. There is that hesitation that we would certainly have if we feel that that person, even though he seems to have been rehabilitated within the prison structure —

Q All right. Let's talk about that situation.

Here is a situation where a decision may be called for as to whether he would be a danger to society if he were released. Right?

A Yes sir.

Q That's the problem you're thinking of.

A That can be a problem, yes.

Q Now, that's a problem that the Parole Board has to consider too, does it not?

A Yes, it does.

Q And if you then say this is a problem, but we'll let the Parole Board decide it, you are deciding their problem in that case, are you not?

A You mean if we reduce it to enough time so they can go before the Parole Board

Q Right.

A I would say that we do expect that if a case goes before the Parole Board, it is going to do its responsibility also; and not just because we gave a pardon to reduce it means that that person should go out on the street. It means that he should be given consideration at that time for parole.

Q That's all.

A Now, I think the case that your honor had before you, and decided, and that became moot, we had heard that gentlemen at a session and we were giving very serious consideration to give him a pardon. We thought he was at that point. But we

were very concerned about the psychiatric evaluation we had. And we wanted some assurances in that regard before we granted it.

While you're deciding it, or it was going up, that information —

MR. O'NEILL: It was the same day.

A — that information came back to us and we were satisfied that, yes, he should be pardoned now, and we did grant it.

A year before that, based upon the reports that I had seen, I would not have considered that man for a pardon. But I was then satisfied — had he rehabilitated himself, educated — in fact, he's married now. On one of his furloughs he got married. The man had done almost a normal life. The point was should we keep this man here, are we becoming cruel; he's out on the street every day, anyhow.

But we also had to consider that he had committed a very serious crime.

Q I understand.

A So we decided that if we could have some assurances from what we consider to be the experts that this man is not going to be a danger to society, that he would be let out, and we did.

Q Well, suppose you say that. The psychiatric reports we have indicate the risk of releasing him to society is too great, the danger to society is too great to risk his release.

A Well, I don't want to — when I call witnesses, your honor, I think that —

Q No.

A You know, I'm an attorney and I practice, and sometimes as a witness it's difficult because you're second guessing those who are questioning you because you sometimes know what the inevitable is.

But what I'm really saying is that perhaps the theory of a pardon, and I hope you don't take this, and I know you won't, coming from the divine power as it developed down, that this is just an act of mercy to be granted, that then went into the sovereign, the Governor and so forth, and has worked its way into this Board.

I don't think there's a jealousy on the part of the Board to keep that prerogative, that they're above everything. But I do think that we consider ourselves in a category far different than the Parole Board or the courts. You don't even have that power as a judge. There are certain restrictions you have. If a person is found guilty, you have to go by certain statutory requirements.

There is absolute power on the part of this Board to grant this pardon.

Q I don't think you're right about that, you know.

A All right.

Q I mean the divine right to pardon or the regal right to pardon did, you know, sort of filter down into the system we have in this country. But there has never been anybody who has any real thoughtful support for the view that a Governor, or anybody else, has a divine right.

A I agree, especially in Connecticut. Connecticut never gave it to us.

Q Well, they never gave it to the Governor in Connecticut and Judge Ribicoff washed his hands of all responsibility by getting this law passed and says we'll have a bunch of fellows and let them look at these cases and decide what to do.

And the only thing is now that we've got men doing it who are appointed by the legislature or the Governor, why shouldn't they have the slight responsibility placed upon them to say why they do it? If you're going to take refuge in the fact we don't need to say it because we have a divine right —

A I don't think I used that term, your honor.

Q No. That's me.

A Okay.

Q But we have, you know, an unimpeachable, unquestionable right to decide whether mercy shall be given or not.

MR. O'NEILL: He certainly does have a point, your honor.

THE COURT: What?

MR. O'NEILL: He certainly does have a point.

THE COURT: There's a point, if you want to read the case —

MR. O'NEILL: When President Ford denied Haldeman and Erlichmann pardons, and Mitchell pardons, did he have a constitutional obligation to give him a reason why he did?

THE COURT: I don't know.

MR. O'NEILL: I don't mean to address an inquiry to the Court.

THE COURT: I don't know.

MR. O'NEILL: I certainly claim he had no constitutional obligation to give them a reason, and he didn't give them a reason.

THE COURT: Well, it doesn't come up in that case. He gave them one, didn't he?

MR. O'NEILL: It's the same pardon.

THE COURT: Did he deny?

MR. O'NEILL: He denied them.

THE COURT: All right. Well, maybe they should challenge him. We've got challenges here.

But just because Haldeman didn't challenge him doesn't mean that Dumschat can't.

MR. O'NEILL: Can I ask a question? I don't mean to interrupt you.

THE COURT: You can ask me too, I guess.

MR. O'NEILL: I don't mean to you; to the witness.

THE COURT: Sure.

BY MR. O'NEILL:

Q Mr. McQuillan, if the Board had to give individual I withdraw that.

I gather that, from the gist of your testimony, you're saying that the reason for denying a pardon may vary from case to case; sometimes it's the seriousness of the offense, sometimes it's bad psychiatric report, sometimes there may be a bad institutional record —

A Yes sir.

Q — and a variety of other things?

A I'd like to think we treat each person individually and on his own merits.

Q Okay. So it's not always the same reason for denying a pardon?

A No. And there's no restriction whatsoever on anyone who comes before us.

The only thing that we might do is that if we have a record on someone who has come before us seven or eight times, unless there's something new and additional, we might ask him to limit. But he is not required to do so. And he may engage, or his counsel, in an adversary proceedings with the state's attorney who is there, who might object to the granting of a pardon.

They can counter that, as far as we're concerned. I know of no restriction we've ever placed on anybody in presenting their argument.

Q So if I appeared before the Board of Pardons I can bring in any witness I want to?

A That's correct.

Q I can submit any documents that I may have?

A Correct.

Q Within the limits of reason, I suppose?

A As long as it is pertinent to the granting of a pardon.

It may at times seem rather extraneous, but there are many considerations we can give that should allow for this person to be released.

Q Okay. But there's no restrictions on what I can do to attempt to persuade the Board to exercise its authority and give me some sort of relief?

A The only thing that I did have some concern with, and his honor has asked me about, is his own decision in the Dumschat case which seems to restrict it to people with life terms after having served two-thirds, let's say, of their sentence. And I'm wondering if we are going to give reasons, are we going to give reasons to everyone; and that is the inmates, the non-inmates.

Because, you know, we have several sessions a year, your honor, for non-inmates; people who have committed all sorts of crime —

THE COURT: You mean they are not in confinement?

A Oh, yes. What has happened in this state, your honor, is let's say you have somebody who is going up, this is a common thing, to be an officer in a company, and when he was 17 years old, in college, he had a marijuana rap, and nobody even knows about it in the family, and he wants it off his record; or, somebody has been in prison and he's going to die.

We have as many as 60, 70, 80 of those come before us twice a year. Many of those are denied. But we are granting up around 60, 70 —

THE COURT: I don't think we have that class before us. The only class we have are inmates.

MR. O'NEILL: That's right. And lifers.

THE COURT: What?

MR. O'NEILL: Inmates serving life sentences. That is the class.

MR. HANLEY: That is correct.

THE WITNESS: At this time.

THE COURT: At this time, yes.

BY MR. O'NEILL:

Q Well, the question I was trying to lead up to, Mr. McQuillan, is if the Board is required to give individualized statements every time it denies a pardon, in terms of administrative burden how is that going to affect the opportunity of inmates to appear before the Board?

THE COURT: How would it affect the inmates?

MR. O'NEILL: Yes.

Q I mean, in other words, you hear some what 50 or 60 hearings a day?

A Yes.

THE COURT: I don't think we are concerned with how it's going to affect the inmates.

MR. O'NEILL: I think it is important, your honor, if it means that I —

THE COURT: You mean there's a reason for not telling them.

MR. O'NEILL: Yes.

THE COURT: All right.

MR. O'NEILL: You know, if it means I won't appear for another six months, I think that's an important thing for the Court to know.

If it means because the Board of Pardons has to give an individualized statement of reasons, instead of hearing 50 or 60 cases, that you can only hear 20 cases —

THE COURT: Well, I don't know.

MR. O'NEILL: That's what I'm asking.

THE COURT: All right.

A I'm not sure I really understand.

THE COURT: Is it going to take you any longer?

Q (By Mr. O'Neill) Will it reduce the number of people that you can hear in the course of a day?

A I would say no.

Q No?

THE COURT: You don't have to make them like it. All you have to do is say this is the reason.

Q (By Mr. O'Neill) But if you have to give an individualized statement of reasons, you think you could still hear the same number of cases as you are hearing now without a statement of reasons?

A I think it would certainly increase the responsibility of our secretary, and we have a very limited budget, we only have one person who is a practicing attorney who works on a part-time basis for our Board who accumulates all the information and presents the files to us. He's the one that's responsible for giving them their answer.

And I think that there would certainly have to be some increase in the staff responsibility. And I do really believe that if we're going to be fair to him, and we're going to give a reason, it should be a good and legitimate reason; not a stereotype run of the mill.

Q What I'm suggesting is, and I certainly don't presume to speak for the Court, but I think the Court would be interested in knowing whether or not, if it issues the order that is requested, it would mean that inmates who would be heard today will not be heard for another six months. I respectfully submit that the Court would be interested in knowing that. And that's my question. Do you think that would be the result?

A I really don't think it would. I think that if, under the procedure we use, I think that we would just have to make ourselves available for another day.

If our workload were to go over, we couldn't get it all done

that Monday, I think we would have the responsibility as we are set up now to go over into another day.

It would create problems in the transporting of these — no, they are transported from various parts of the state into the institution.

BY THE COURT:

Q Well, you say you would have to go over for another day?

A It could very well, your honor. If we're going to —

Q Well, that depends upon how many cases you had that day?

A Certainly, yes sir. And it depends upon —

Q Well, have you got any estimate as to how many you could dispose of without this requirement, and how many fewer it would limit you to if you had this requirement?

A Your honor, I think that the procedures that we have are very common to what you have when a lawyer says, I only have two questions, it will only take me five minutes with this witness, and you're sitting here three days later with a witness on the stand.

I can look at a docket and think I'm going to be out of the prison at four or five o'clock in the afternoon, and I'm not out much later than that because somebody takes up a great deal of time. We really don't know how we're going to control that docket.

Q But we're just talking about stating the reason for denial. You deny. And if you state the reason, you can state it

there orally, I suppose, or you can state it for the record and then a notice to the applicant: "Denied. Reason: It would be a danger to society to release you into the general population at this time"; or, "The seriousness of your offense is so great that it would deprecate it".

Now, to a certain extent I would think that you can't avoid what you call a stereotype kind of expression of a reason and the requirement of a further explanation would not come about too often. I don't know.

A I don't know how frequently it would. I'm not sure of how many individual cases, but some of them are repetitive, your honor. I don't know percentage wise, but I know that I have received my stack in preparation for the first hearing in April, which I'm starting to go through.

Many of them I only have to take a cursory examination because I've met them three or four times before. If it's something new, I'll look at it. If not, I'll just go on to a new one.

Q All right. And I suppose when you come the other members of the Board already have more or less arrived at a tentative opinion as to how it should be disposed of.

A We have quite a bit of information by the time we —

Q You exchange information before you even get there?

A Every letter and document that is presented by an individual on his behalf, that goes to the secretary and is disseminated to all the members prior to our meeting.

Q I know. But do you have any discussion beforehand as to what you think ought to be done in a particular case? Does that happen regularly?

A No, your honor.

Q Occasionally, maybe?

A The main thing that we discuss in our executive session, prior to going into the meeting, is whether or not the person should even be heard. We have certain requirements about having been heard before or what their situation is. That would be the only thing.

But as far as the individual himself, we don't discuss him until after he has presented his case.

* * * * * *

CROSS-EXAMINATION:
BY MR. HANLEY:

Q Mr. McQuillan, have any absolute pardons been given to inmates in recent years? Have you given any pardons where you have cut the inmate loose, without just making him eligible?

A I want to distinguish between that.

Yes, we have. But when you say "absolute pardon", that entails, as his honor said, a lot of things. It just wipes the record clear. That we have not done. We have pardoned him for time served.

Q And you have not required him to go before the Board of Parole?

A That is true.

Q And how many cases have you done that in?

A I would say two or three.

Q Two or three total?

A Yes sir.

Q Generally, when you grant a pardon, you grant a conditional pardon which makes the inmate eligible for parole before completing the minimum sentence that he was sentenced to?

A That is a fair statement.

If I may, one that comes to my mind, at our last session, I believe it was an attorney represented a client before us, we denied the pardon. I think it was based upon the crime he had committed. The severity, the short period of time he had been there.

Within three or four days of that he was admitted to the prison hospital, was found to be terminal, and it was estimated by the medical profession that he would not have six months to live.

We were asked to give special consideration to him. We did. We did it via telephone conferences and so forth, took a vote, and he was granted pardon and was released.

Q But that's a rare case?

A It is.

Q And sometimes when you grant these conditional pardons you make the inmate immediately eligible for a parole, so that he can go before the Parole Board at the next hearing?

THE COURT: Eligible for parole consideration.

Q Parole consideration.

A That has been done, yes.

Q And then in other cases you make the inmate eligible for parole consideration not at the time you grant him a pardon, but at some intermediate date between when you grant him the pardon and when he would have become eligible for parole if you had not granted him the pardon?

A If I understand your question properly, it might be that let's say there's a lifer who has only served 12 years. We might reduce it to minimum of 20 years, which would mean that perhaps in four years he'd be eligible for parole.

I think the philosophy of the Board in that particular subject is that other than new statutes, where you have 10 to 25 years minimum up to a maximum of life, that some of these people should have hope within the prison institution that there is going to be consideration given to them sometime in their lifetime. And after they've been there long enough we try to give them that hope.

Q Thank you.

You're aware that this case deals with lifers?

A Yes, I am.

Q And all of the lifers have committed a fairly serious crime, in your opinion, is that correct?

A That's true, yes.

Q And so is it your opinion that if you were forced to give a statement of reasons, that would not be fair to the inmate, the

life inmates who are lifers, just to say that they committed a serious crime?

A I think that, if I can answer that properly, I hope, some of them, if we were going to be fair with them, it might be very discouraging and very depressing. I think there are people who have come before me, if I'm going to be fair and honest with his Court, that I don't think I could, in good conscience, ever vote to give them a pardon.

And I really don't think I'd want to tell him that because there might be something from that Board two years from now that might have different philosophy than I, and different feeling, and might grant him that pardon.

For him to know that it would never be granted by the presently constituted Board, no matter what he did he was not going to earn consideration for a pardon, I think could be very demoralizing. It's bad enough being in there and facing the situation, but we could, I think, compound it if we took that. And there are people who I think you can appreciate fit within that category.

Q The point I was getting at was we're dealing here with lifers and there are significant number of lifers who do receive pardons. Is that correct?

A There are, yes.

Q And then there are some lifers who do not receive pardons?

A That's correct.

Q Therefore, your differentiation is not made solely on the basis of the seriousness of their crime?

A That is a fair statement.

Q And so you consider various factors when you consider their applications for pardons, correct?

A Yes. Also we consider what they ask for. Many of them come before us and state specifically what they want.

For instance, they'll come and say: We know you're not going to let me out of here today, I know I've been bad, I've got to pay, but could you give me this consideration so I can get on the work release program; or, if you give me a certain amount of time I'll be able to go out and go to school and take advantage of different programs.

If these are shown to be legitimate, we will give consideration to that, to allow that person to take advantage of some of the institutional provisions, or what his own particular goal is. It might be reasonable, and we'll give consideration to that.

Q And when you deny a pardon in different cases you consider various factors. For instance, you'll consider the prior criminal record of the applicant?

A Yes.

Q And you'll consider the circumstances surrounding his crime?

A That's correct.

Q And you'll consider any psychiatric reports that might be in the file?

A Yes.

Q And his conduct while incarcerated?

A Yes.

Q And his prospects for leading a crime-free-life if released, for instance future employment, family situation, things like that; those factors would be considered?

A Yes. I think that, you know, there have been prisoners that have come before us that have been institutionalized so long in their life that almost to let them out the records would indicate that they're not capable of functioning in society because they have been so institutionalized that they have become completely dependent upon it. Even though on an act of mercy you might want to let them out you wouldn't be doing them —

THE COURT: For his own good he ought to stay there - that's the view?

THE WITNESS: Oh, no. I think it's not based upon just — there's usually quite a bit —

BY THE COURT:

Q Well, I mean it would be unfair to him to let him out because he can't cope, so we're not going to give him the chance to get out, we'll keep him here; sort of a beneficent governmental attitude?

A No.

Q Well, now, I don't say that it doesn't spring from the pure well springs of charity in your heart, the milk of human kindness, but I just know whether —

A It goes along with some of the other questions asked by the attorney, your honor, that he was asking. Did he have a place to go, a family unit to sit in with, something that he could do, you know, to make himself a part of society.

Q Whether he can cope or not.

A Yes, whether there is any means to take care of him.

THE COURT: All right. Conditions to cope with.

BY MR. HANLEY:

Q You also consider what the state's attorney says at the hearing?

A Yes.

Q So when these cases of the lifers come before you, when you apply for a pardon, in some cases you deny the pardon for some reasons, and in some cases when you deny a pardon you deny it for other reasons?

A That's true.

Q And you weigh the factors differently in different cases?

A We weigh all the factors in every case, but in some of them the factors have a different effect, depending upon what they relate.

I think you just mentioned, for instance, conduct in prison. Some people, they think it's horrible that a young man is put into that prison and gives a lot of fresh talk to a guard and he's sounding off.

My personal feeling, if somebody put me in prison today they'd take a few years before they'd be able to keep me from shutting up and sounding off about this system. I don't really —

THE COURT: You mean you think you would start to complain right away?

THE WITNESS: Your honor, my feeling on it, if a person —

THE COURT: Do you know how many merit points you have to earn from the prison population before you're allowed to talk out of turn? You've got to work yourself up from the ranks before you're allowed to speak, even for yourself, there I'm told.

THE WITNESS: Excuse me. I didn't mean it —

THE COURT: Go ahead.

BY MR. HANLEY:

Q Now, each inmate after he served one year of his sentence each inmate can appear before you annually to apply for pardon, is that correct?

A Yes.

Q How many sessions a year do you have with inmates?

A Four.

Q Four sessions. And are you aware that Mr. O'Neill is about to admit in his answer that there are currently 35 inmates serving life sentences?

A I don't know, but it doesn't surprise me.

MR. O'NEILL: I haven't discussed that.

THE COURT: Well, so what?

Q (By Mr. Hanley) So on the average you would have

nine inmates at most appearing before you at each session for inmates?

A Nine?

Q If there were nine inmates serving life sentences who appear before you at each session —

MR. O'NEILL: Actually, I am told there are more than 35.

THE COURT: So he has a dozen each time of lifers, if you have four hearings a year.

A I think the last time, if I recall, I think I had about 19 of them.

Q Okay. That would be 19 out of 60, is that correct?

A If that's what the statistics are. I don't dispute it.

Q And is it the aim of the pardons board to consider the success of applications as consistent a way as possible, success of applications by one inmate?

A To consider them how?

Q As consistently as possible. You know, if he appears before you one year, you consider the same factors that you would consider the next year and the next year?

A Unless he brings something new or unless we independently, either from the correctional institution, or some other source, or the state's attorney changes its position. I didn't read the whole argument, but yesterday I understand we've had the Ronnie McLucas case before us many times and the state's attorney has just violently opposed it. And I under-

stand he's going to recommend now that he be released.

THE COURT: Who? Bobby Seale?

THE WITNESS: No. The other one.

Is it Ronnie McLucas?

MR. O'NEILL: Lonnie McLucas.

THE COURT: Lonnie McLucas.

The Panthers have been disbanded now and —

THE WITNESS: I think for some reasons he's changed his position on it.

THE COURT: Yes.

Q (By Mr. Hanley) Generally, then, if a lifer appeared before you one year after another after another, the reasons would often be the same for denying him pardon?

A Yes, it could very well be.

MR. HANLEY: We have no further questions, your honor.

MR. O'NEILL: I have no further questions.

(Witness excused)